

No. 3-082A145
Date MAR 23 1983
Fee \$ 50.00



CONTINENTAL BANK

ICC Washington, D. C.

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO • 231 SOUTH LA SALLE STREET, CHICAGO, ILLINOIS 60693

March 22, 1983

Secretary of the Interstate
Commerce Commission
Interstate Commerce Commission
12th Street and Constitution Avenue, NW
Washington, D.C. 20423

RECORDATION NO. 8504-B Filed 1425
MAR 23 1983 - 3 12 PM
INTERSTATE COMMERCE COMMISSION
REGISTRATION BR
MAR 23 1983

Dear Secretary:

We have enclosed two originals of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a security agreement and an assignment of lease dated as of March 15, 1983.

The names and addresses of the parties to the document are as follows:

- Secured Party/Assignee: Continental Illinois National Bank
and Trust Company of Chicago
231 South LaSalle Street
Chicago, Illinois 60693
- Debtor/Assignor: Merchants Investment Co.
105 West Madison Street
Chicago, Illinois

A description of the equipment covered by the document follows:

Three (3) 2931 cubic foot, 100-ton truck, covered hoppers railcars, serial no. nahx 35593, 35617 and 35628, running nos. crex 953, 954 and 955, respectively, AAR designation LO.

The Lease to which this document is connected is recorded under Recordation No. 8504.



-2-

A fee of \$50.00 is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to Continental Illinois National Bank and Trust Company of Chicago, 231 South LaSalle Street, Chicago, Illinois 60693, Attention: Violetta G. Kapsalis, Esq., Law Department, 105/8.

A short summary of the document to appear in the index follows:

Security agreement granting a security interest in, inter alia, a car leasing agreement and equipment and an assignment of the lessor's interest in the car leasing agreement.

Very truly yours,

CONTINENTAL ILLINOIS NATIONAL BANK
AND TRUST COMPANY OF CHICAGO

Peter D. Horne
Vice President

Interstate Commerce Commission
Washington, D.C. 20423

3/23/83

OFFICE OF THE SECRETARY

Continental Illinois National Bank
& Trust Co. of Chicago
231 South LaSalle St.
Chicago, Ill. 60693
Attn: Violetta G. Kapsalis, Esq.
Law Dept. 105/8

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 3/23/83 at 3:30pm, and assigned re-
recording number(s). 8504-B

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

Dear

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on _____ at _____, and assigned re-
recording number(s).

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

SECURITY AGREEMENT AND ASSIGNMENT OF M.A.S.E. 1983-3 10 PM

INTERSTATE COMMERCE COMMISSION

THIS AGREEMENT, dated as of March 15, 1983, is entered into between MERCHANTS INVESTMENT CO. (herein called the "Lessor"), and CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association (herein called the "Bank").

For value received, and in consideration of any loan or other financial accommodation heretofore or hereafter at any time made or granted to the Lessor by the Bank, and for other good and valuable consideration, the parties hereto agree as follows:

1. Grant of Security Interest. As security for the payment of all obligations of the Lessor under any account or any promissory note (herein together and individually called "Note") evidencing any loan or advance heretofore or hereafter made by the Bank to the Lessor, all obligations of the Lessor hereunder, and all other obligations of the Lessor to the Bank, its successors and assigns, howsoever created, arising, or evidenced, whether direct or indirect, absolute or contingent, or now or hereafter existing, or due or to become due (herein collectively called the "Liabilities"), the Lessor hereby assigns to the Bank, and grants to the Bank a continuing first priority security interest in, all of the Lessor's right, title, and interest in and to the following property (herein collectively called the "Collateral"):

- (i) that certain car leasing agreement between the Lessor and Pennsylvania Glass Sand Corporation (herein called the "Lessee") dated October 1, 1974 (herein called the "Leasing Agreement"), as it relates to Rider No. 8 thereto dated November 29, 1982 (the "Rider"), which Leasing Agreement and Rider shall herein collectively be called the "Lease";
- (ii) all right, title, interest claims and demands of Lessor in, to and under the Lease including all extensions of the term of the Lease, together with all rights, powers privileges, options and other benefits of the Lessor under the Lease, including, without limitation:
 - (a) the immediate and continuing right to receive and collect all rental insurance proceeds, condemnation awards and all other payments, tenders and security now or hereafter payable to or receivable by the Lessor under the Lease (herein collectively called the "Lease Payments"), and

- (b) the right to make all waivers and agreements and to give and receive duplicate copies of all notices and other instruments or communications.
- (iii) all guaranties and other property securing the payment or performance of the Lessee's obligations under the Lease;
- (iv) the property leased under the Lease and described in the Rider, together with all accessories, parts, equipment and appurtenances appertaining or attached to any of the equipment, and other property now or hereafter affixed thereto or used in connection therewith and all substitutions, renewals therefor or replacements thereof (herein collectively called the "Equipment");
- (v) all rights, title, interest, claims and demands, if any, which the Lessor may have against any manufacturer or seller, or any lessee of the Lessor, of the Equipment and all proceeds of such rights, title, interest, claims and demands; and
- (vi) all proceeds of any of the foregoing.

2. Representations, Warranties, and Agreements. The Lessor hereby represents, warrants, and agrees as follows:

- 2.1 The Lessor is a corporation duly organized, validly existing and in good standing under the laws of the State of Illinois and it is duly qualified and in good standing as a foreign corporation authorized to do business in each state where, because of the nature of its activities or properties, such qualification is required.
- 2.2 The Lessor has good title to the Collateral. This Agreement constitutes a valid and continuing first lien on and security interest in the Collateral, free and clear of all other liens, encumbrances, and security interests. Except for the Lease, the Lessor will not sell, lease, assign, or create or permit to exist any lien, levy, or encumbrance on, or other security interest in, any of the Collateral, and will defend the Bank's security interest therein against all claims and demands. No financing statement, filing, recordation or registration with the Interstate Commerce Commission

("ICC") or other agency covering all or any part of the Collateral is on file in any public office, except any financing statement, recordation or filing (i) filed by the Lessor in favor of the Bank, (ii) covering all or any part of the Equipment and designating the Lessor as secured party or lessor, and (iii) filed by the Lessor on October 4, 1976 with the ICC and assigned recordation number 8504.

- 2.3 The Equipment will be kept within the United States of America or Canada and will not be removed therefrom except pursuant to the prior written consent of the Bank.
- 2.4 The Lessor has full power and authority to assign to the Bank, and grant to the Bank a security interest in, the Collateral, and is, and will continue to be, duly authorized to perform its obligations hereunder. The Lessor is duly authorized to execute and deliver this Agreement, the Note and all other documents furnished to the Bank by the Lessor and is and will continue to be duly authorized to borrow monies under the Note and to perform its obligations under this Agreement, the Note and all other documents furnished to the Bank by the Lessor. The execution and delivery of this Agreement, the Note and all other documents furnished to the Bank by the Lessor and the performance by the Company of its obligations under this Agreement, the Note and all other documents furnished to the Bank by the Lessor do not and will not conflict with any provision of law or of the charter or bylaws of the Lessor or of any agreement binding upon the Lessor.
- 2.5 The Equipment was delivered to the Lessee in satisfactory condition and was accepted by the Lessee. The Lease (i) is the only document executed by the Lessor and the Lessee with respect to the Equipment (ii) complies with all applicable laws, statutes, and regulations, (iii) is genuine, as appearing on its face, enforceable according to its terms, free of disputes, set-off, counterclaims and defenses; and (iv) represents indebtedness, obligations, interests, or property justly owing to and owned by the Lessor in amounts or as therein provided.
- 2.6 The Lessor will keep or cause the Equipment to be insured against such risks and casualties, in such amounts, with such carriers, and under such policies and in such form, all as the Bank may consider reasonable, customary, or appropriate, which policies shall provide for written notice to the Bank at least ten days prior to cancellation, nonrenewal, or material

change and that loss thereunder shall be payable to the Bank as its interests may appear (and the Bank may apply any proceeds of such insurance which may be received by it toward payment of the Liabilities, whether or not due, in such order of application as the Bank may determine) and such policies or certificates thereof shall, if the Bank so requests, be deposited with the Bank.

- 2.7 The Lessor shall use the Equipment and cause the Equipment to be used only in the manner for which it was designed and intended. The Lessor shall at its own cost and expense, keep and maintain or cause the Equipment to be kept and maintained in good operating condition, ordinary wear and tear excepted, free of misuse, abuse, waste, and deterioration and suitable for use in interchange (if and to the extent permitted by the Interchange Rules or supplements thereto of the Association of American Railroads (the "AAR"). The Lessor shall not modify or permit the modification of any Equipment without the prior written authority and approval of the Bank.
- 2.8 Without limiting the foregoing Section 2.6, the Lessor agrees to comply with all insurance policies covering the Equipment and all governmental laws, regulations, requirements and rules (including, without limitation, the rules of the United States Department of Transportation, the Interstate Commerce Commission and, if and to the extent permitted thereby, the current Interchange Rules or supplements thereto of the Mechanical Division, AAR) as the same may be in effect from time to time with respect to the use, maintenance and operation of the Equipment. In case any equipment or appliance is reasonably interpreted as being required to be installed on any Equipment in order to comply with such laws, regulations, requirements and rules, the Lessor agrees to make such changes, additions and replacements at its own expense; provided, however, that the Lessor may, in good faith and by appropriate legal proceedings, contest the validity or application of any such laws, regulations, requirement or rule in any reasonable manner which does not in the opinion of the Bank adversely affect the security interest of the Bank hereunder.
- 2.9 The Lessor will from time to time pay or cause to be paid all liens, taxes, licenses, assessments, and governmental charges levied, assessed, or imposed upon any of the Collateral, unless and to the extent only

that the same shall be contested in good faith and by appropriate proceedings by the Lessor, provided that such proceedings do not involve the sale, forfeiture, or loss of any of the Collateral or any interest therein. The Lessor will comply with all laws, statutes, and regulations pertaining to the Collateral.

- 2.10 Upon default by the Lessor in any of its agreements set forth in paragraphs 2.5, 2.6, 2.7 or 2.8 hereof, the Bank may, but shall not be obligated to, (i) effect any such insurance and repairs and pay all or any part of the premiums therefor and the costs thereof, and (ii) pay and discharge any taxes, licenses, liens, and encumbrances on the Collateral. All sums so advanced or paid by the Bank shall be payable by the Lessor to the Bank on demand, with interest at the rate of the Prime Rate, hereinafter defined, from time to time in effect plus 2-1/2% per annum and shall be secured hereunder. "Prime Rate" at any time shall mean the rate of interest then most recently announced by the Bank at Chicago, Illinois as its prime rate; and each change in the interest rate shall take effect on the effective date of the change in the Prime Rate. Interest hereunder shall be computed on the basis of a year consisting of 360 days and paid for actual days elapsed.
- 2.11 The Lessor will from time to time on request of the Bank, execute such financing statements and other documents (and pay the cost of filing or recording the same in all public offices deemed necessary by the Bank) and do such other acts and things, all as the Bank may request, to establish and maintain a valid security interest in the Collateral to secure the payment of the Liabilities, including, without limitation, deposit with the Bank of any certificate of title issuable with respect to any of the Equipment and notation thereon of the security interest hereunder (and any carbon, photographic or other reproduction of this Agreement or of any such financing statement shall be sufficient for filing as a financing statement).
- 2.12 The Bank shall have the right at all reasonable times to enter into and upon the premises where any of the Equipment which is in the possession of the Lessor (whether by return, repossession, or otherwise) is located for the purposes of inspecting the same, observing its use, or otherwise protecting its interests therein. Upon demand, the Lessor will provide the Bank with such information concerning the Lessor and

its business as is requested, and will permit the Bank and its designees to inspect and copy the records thereof. The Lessor will notify the Bank of the occurrence or existence of any of the events or conditions constituting a default under the Lease immediately upon learning of the same.

2.13 The Lessor will deliver the original Lease to the Bank and will mark all copies thereof so as to give clear and conspicuous notice that the Lease has been assigned to the Bank. The Lease shall not be amended or revised in such manner as to materially affect the rights of the Bank without its prior written consent, nor shall the Lease be terminated without prior written notice to the Bank.

2.14 Until such time as the Bank shall notify the Lessor of the revocation of such power and authority, the Lessor will, at its own expense, endeavor to collect, as and when due, the Lease Payments, and all other amounts due with respect to any of the Collateral, including the taking of such action with respect to such collection as the Bank may reasonably request or, in the absence of such request, as the Lessor may deem advisable. The Bank, however, may, at any time, whether before or after any revocation of such power and authority or the maturity of any of the Liabilities, notify the Lessee and any of the other parties obligated on any of the Collateral to make payment to the Bank of the Lease Payments and any other amounts due or to become due thereunder or arising therefrom, and enforce collection of any of the Collateral by suit or otherwise and surrender, release, or exchange all or any part thereof, or compromise, or extend or renew for any period (whether or not longer than the original period) any indebtedness thereunder or evidenced thereby. Upon request of the Bank, the Lessor will, at its own expense, notify the Lessee and any of the other parties obligated on any of the Collateral to make payments to the Bank of the Lease Payments and all other amounts due or to become due thereunder or arising therefrom.

The Lessor will (except as the Bank may otherwise consent in writing) forthwith, upon receipt, deliver to the Bank, in the form received and properly endorsed where required, any of the Lease Payments and all other cash, checks, drafts, instruments, or writings for the payment of money which may be received by the Lessor at any time in full or partial payment or otherwise as proceeds of the Collateral. Except as the Bank may

otherwise consent in writing, any of the Lease Payments and such other items which may be received by the Lessor will not be commingled with any of its other funds or property, but will be held separate and apart and upon express trust for the Bank until delivery is made to the Bank. The Lessor will comply with all terms and conditions of any consent given by the Bank pursuant to the provisions of this paragraph. The Bank is authorized to endorse, in the name of the Lessor, any of the Lease Payments and such other items which may be received by the Bank. Any of the Lease Payments and such other items which are received by the Bank pursuant to this Agreement (to the extent that they represent collected funds) shall be applied toward payment of the Liabilities, whether or not then due, in such order of application as the Bank may determine.

2.15 The Lessor will reimburse the Bank for all expenses, including reasonable attorneys' fees and legal expenses, incurred by the Bank in seeking to collect or enforce any rights under the Collateral and in the preparation, negotiation and execution of this Agreement, the Note and any documents required to be furnished herewith.

2.16 This Agreement shall not relieve the Lessor from, or cause the Bank to be liable for, the obligations of the Lessor under the Lease. The Lessor shall use its best efforts to cause the Lessee to perform its obligations under the Lease. The Bank may exercise at any time and from time to time, such rights, powers, and remedies of the Lessor under the Lease as the Bank may, in its sole discretion, deem to be appropriate.

3. Default. The occurrence of any of the following events shall constitute a Default (as such term is used herein):

3.1 Non-payment, when due, of any amount payable on any of the Liabilities or failure to perform any agreement of the Lessor contained herein;

3.2 Any statement, representation, or warranty of the Lessor herein or in any other writing at any time furnished by the Lessor to the Bank is untrue in any material respect as of the date made;

3.3 The Lessor becomes insolvent or generally fails to pay its debts as they become due or files a petition for

relief or consent for or acquiesces in the appointment of a trustee, receiver or custodian for the Lessor or any of its property; or, in the absence of such petition, consent or acquiescence, a trustee, receiver or custodian is appointed for the Lessor or for a substantial part of the property of the Lessor and is not discharged within 30 days; or any bankruptcy, reorganization, debt arrangement, or other proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding is instituted by or against the Lessor and if instituted against the Lessor is consented to or acquiesced in by the Lessor or remains for 30 days undismissed; or any warrant of attachment is issued against any substantial portion of the property of the Lessor which is not released within 30 days of service;

- 3.4 Entry of any material judgment against Lessor;
- 3.5 Dissolution, merger, or consolidation, or transfer of a substantial part of the property of Lessor;
- 3.6 The occurrence or existence of any of the events or conditions constituting a default under the Lease; or
- 3.7 The Pension Benefit Guaranty Corporation applies to a United States District Court for the appointment of a trustee to administer any Plan [as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended, ("ERISA")] adopted, established or maintained by the Lessor, or any affiliate of the Lessor or for a decree adjudicating that any such Plan must be terminated; a trustee is appointed pursuant to ERISA to administer any such Plan; any action is taken to terminate any such Plan or any such Plan is permitted or caused to be terminated if, at the time such action is taken or such termination of any such Plan occurs, the Plan's "vested liabilities", as defined in Section 3(25) of ERISA, exceed the then value of its assets at the time of such termination;

Whenever a Default shall be existing, each Note and all other Liabilities may (notwithstanding any provisions thereof), at the option of the Bank, and without demand or notice of any kind, be declared, and thereupon immediately shall become, due and payable, and the Bank may exercise from time to time any rights and remedies available to it under applicable law. The Lessor agrees, in case of Default, to assemble, at its expense, all of the Equipment which is in its possession (whether by return, repossession, or otherwise) at a convenient place

acceptable to the Bank and to pay all costs of the Bank of collection of all Notes and all other Liabilities, and enforcement of rights hereunder, including reasonable attorneys' fees and legal expenses, and expenses of any repairs to any realty or other property to which any of the Equipment may be affixed or be a part. Without limiting the foregoing, upon Default the Bank may, to the fullest extent permitted by applicable law, without notice, advertisement, hearing or process of law of any kind, (a) enter upon any premises where any of the Equipment which is in the possession of the Lessor (whether by return, repossession, or otherwise) may be located and take possession of and remove such Equipment, (b) sell any or all of such Equipment, free of all rights and claims of the Lessor therein and thereto, at any public or private sale, and (c) bid for and purchase any or all of such Equipment at any such sale. The Lessor hereby expressly waives, to the fullest extent permitted by applicable law, any and all notices, advertisements, hearings or process of law in connection with the exercise by the Bank of any of its rights and remedies upon Default. Any notification of intended disposition of any of the Collateral required by law shall be deemed reasonably and properly given if given at least five days before such disposition. Any proceeds of any disposition by the Bank of any of the Collateral may be applied by the Bank to the payment of expenses in connection with the Collateral, including reasonable attorneys' fees and legal expenses, and any balance of such proceeds may be applied by the Bank toward the payment of such of the Liabilities, and in such order of application, as the Bank may from time to time elect.

4. General.

- 4.1 The Bank shall be deemed to have exercised reasonable care in the custody and preservation of any of the Collateral in its possession if it takes such action for that purpose as the Lessor requests in writing, but failure of the Bank to comply with any such request shall not of itself be deemed a failure to exercise reasonable care, and no failure of the Bank to preserve or protect any rights with respect to the preservation of such Collateral not so requested by the Lessor, shall be deemed a failure to exercise reasonable care in the custody or preservation of such Collateral.
- 4.2 Any notice from the Bank to the Lessor, if mailed, shall be deemed given when mailed, postage prepaid, addressed to the Lessor either at the Lessor's address shown below, or at any other address of the Lessor appearing on the records of the Bank.

- 4.3 No delay or failure by the Bank in the exercise of any right or remedy shall constitute a waiver thereof, and no single or partial exercise by the Bank of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy. This Agreement may not be changed, modified, or discharged in whole or in part and no right or remedy of the Bank hereunder may be waived orally, but only by a written agreement signed by the Bank, and no course of dealing between the Lessor and the Bank shall be effective to change or modify or to discharge in whole or in part this Agreement or the security interest granted hereby.
- 4.4 Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in other jurisdiction.
- 4.5 This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. The rights and privileges of the Bank hereunder shall inure to the benefit of its successors and assigns.

IN WITNESS WHEREOF, the Lessor and the Bank have caused this Agreement to be duly executed and delivered by their respective representatives thereunto duly authorized as of the date first above written.

Address:
105 West Madison Street
Chicago, Illinois 60602

MERCHANTS INVESTMENT CO.

By: *Robert T. Hieb*
Title: VICE PRESIDENT
By: *Thomas J. ...*
Title: PRESIDENT

Address:
231 South LaSalle Street
Chicago, Illinois 60693

CONTINENTAL ILLINOIS NATIONAL BANK
AND TRUST COMPANY OF CHICAGO

By: *John J. ...*
Title: Vice President

STATE OF ILLINOIS)
COUNTY OF COOK) SS.:

On this 15th day of March, 1983, before me personally appeared *THOMAS D. HICKS*, to me personally known, who, being by me duly sworn, says that he is a PRESIDENT of MERCHANTS INVESTMENT CO., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Ruby L. Blair

Notary Public

[Notarial Seal]

My Commission expires

My Commission Expires September 24, 1986

STATE OF ILLINOIS)
COUNTY OF COOK) SS.:

On this 15th day of March, 1983, before me personally appeared *DONALD T. HICKS*, to me personally known, who, being by me duly sworn, says that he is a VICE PRESIDENT of MERCHANTS INVESTMENT CO., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Ruby L. Blair

Notary Public

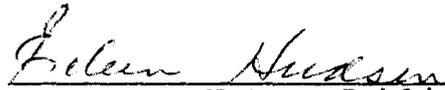
[Notarial Seal]

My Commission expires

My Commission Expires September 24, 1986

STATE OF ILLINOIS)
COUNTY OF COOK) SS.:

On this 15th day of March 1983, before me personally appeared PETER D. HORNE, to me personally known, who, being by me duly sworn, says that he is a Vice President of CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Notary Public

[Notarial Seal]

My Commission expires 10-13-86